



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Becky Phillips, Ohio Department of Developmental Disabilities

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: March 11, 2019

RE: **CSI Review – Background Investigations (5123:2-2-02 (Rescind) and 5123-2-02 (New))**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This Ohio Department of Developmental Disabilities ("Department") rule package consists of one rule submitted for review as a new rule, and 1 rule to be rescinded. This rule package was submitted to the CSI Office on November 20, 2018 and the public comment period was open through December 6, 2018.

This rule package contains proposed new rule 5123-2-02, which is a revision and replacement to rescinded rule 5123:2-2-02. The rule reflects revisions made during a comprehensive five-year review process. The new rule has several updates from the rescinded version. Including updated language needed for corrections, updated definitions, and revisions to requirements. The requirements outlined in the proposed rule cover background investigations as they pertain to employment in Ohio's service delivery system for individuals with developmental disabilities. These requirements are proposed to comply with state statute.

During the early stakeholder outreach period, the Department contacted 21 organizations with interests pertinent to the proposed rule for comment. Outreach from 2013 (at the time rule 5123: 2-

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2-02 was developed) led to several revisions in the rescinded rule that are reflected in the new rule. These include expanded definitions of the Retained Applicant Fingerprint Database (Rapback), clarifications that responsible entities check required databases and request criminal records prior to employing an applicant, and clarification of methods to determine an exclusionary period when an applicant, employee, or candidate has committed multiple disqualifying offences.

During the public comment period (November 20th, 2018 - December 6th, 2018), the Department received and responded to three comments. The comments suggested revisions due to lack of clarity, inaccuracies or inadequacies in language. These include the listed name for the Bureau of Criminal Identification and Investigation (BCI), clarification on the purposes of the required database checks, and clarification on Rapback enrolment. Due to these suggestions, the Department made several revisions to the final draft of 5123-2-02 to reflect more accurate language, such as restoring the term “Bureau of Criminal Identification and Investigation,” adding more specific language on the required timeframe for Rapback enrollment, and a removal of language mandating the frequency of Rapback certification to be replaced with language that specifies that Rapback enrollment will occur when the Department issues an initial supported living certificate to a candidate.

Approximately 11,688 entities will be affected by the proposed rule. The impact to these entities will be the time spent to conduct database checks, request criminal records checks, review the Rapback notifications, and compile personnel records. Additional impact includes the necessary fees applied to a BCI, and a Federal Bureau of Investigation (FBI) criminal records check. Fees associated with the BCI check are approximately \$22.00, the FBI Check is approximately \$24.00, and the annual enrolment per employee in the Rapback database is \$5.00. The procedures are consistent with ORC 5123.081, and the agency states that the rule is the result of a state initiative to align requirements for background investigations for providers of Medicaid services across Ohio’s human services delivery systems.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.